

REMARKS

Applicant has corrected minor errors in the claims.

The examiner required restriction to one of the following inventions:

- I. Claims 1-13 and 15-25, drawn to a battery comprising two cylinders, each having at least one hole, that are movable in relation to one another in order to allow or block the passage of air through the hole(s), classified in class 429, subclass 27.
- II. Claims 14 and 26-28, drawn to a battery comprising one cylinder having at least one hole and a ribbon made of a shape memory allow that can be moved in order to allow or block the passage of air through the hole(s), classified in class 429, subclass 27.
- III. Claims 51-55, drawn to a method for operating the battery of Group I, classified in class 429, subclass 27.
- IV. Claims 29-50, drawn to a battery containing a circuit to monitor levels of O₂ in a cell, classified in class 435, subclass 4.
- V. Claims 56-58, drawn to a method for operating the battery of Group III, classified in class 435, subclass 4.

Applicant traverses the restriction with respect to Group I, II, III, IV and V. For the purposes of this paper, Applicant elects Group I, claims 1-13 and 15-25. The examiner reasoned as follows:

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are directed to related battery casings. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the two inventions have a materially different design, the first having a casing made of two cylinders that are movable with respect to each other and the second having a cylinder and a movable ribbon.

Applicant notes that the invention defined by group I is directed to a battery can housing ... including a first member having at least one hole that is exposed to air; and a second member; and a mechanism coupled to one of the first and second members to move the one of the first and second members

Claims 2-14 are all species of claim 1. Claim 2, which claims the battery of claim 1 wherein the first and second members are coaxially disposed cylinders ... and claim 14, which claims that the first member is a cylinder and the second member is a ribbon of a shape memory alloy material are species of claim 1. Therefore, the examiner is incorrect in the restriction requirement since claim 1 is generic to all of its dependent claims and the examiner has not shown the inventions to be independent and distinct.

The examiner also required restriction between Group I and III, stating:

3. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the invention can be used in two different processes. The first, as described in claim 1, is achieved when either the first or the second, but not both, cylinders are moved with respect to each other. The method of Group III claims only the second cylinder moving with respect to the first.

Applicant also traverses this restriction requirement. Initially, the applicant points out that claim 1 is not directed to two cylinders and claim 55 is not directed to "only the second cylinder moving with respect to the first. Rather, claim 55 recites a method of operating the structure of claim 1.

The examiner also required restriction stating:

4. Inventions I, II, III and IV, V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions are drawn to an air valve for a battery casing and a sensor of air quality for use in a battery.

Applicant traverses this restriction requirement. Claims of group III are related to groups I and II, in that each recite a feature of "moving a first cylindrical member having at least one hole that is exposed to air relative to a second member" and groups IV and V are related to the other groups by inclusion of "an air valve to control the level of air in the cell" (group IV) and "moving a first cylindrical member having at least one hole that is exposed to air relative to a second member" (group V).

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The examiner also required restriction between Group IV and V, stating:

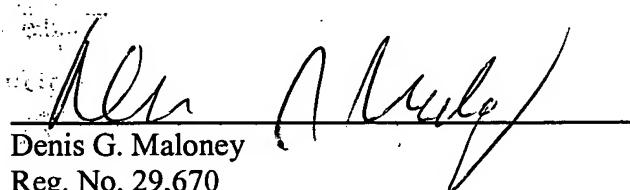
5. Inventions IV and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product can be used by two different methods, as evidenced by the two different claimed methods, of claims 43-50 and claims 56-58.

Applicant traverses this requirement because the basis upon which the examiner requires restriction, namely, "In the instant case the product can be used by two different methods, as evidenced by the two different claimed methods, of claims 43-50 and claims 56-58." is inaccurate and inadequate. The basis is inaccurate because there are not two different claimed methods and the basis is inadequate because "different claimed methods" is not the test. The test is whether the claimed inventions are independent and distinct. The examiner has not made out any case that the claimed method of claims 56-58 is independent and distinct from the claims article of claims 43-50. Each of the groups of claims are related by inclusion of "an air valve to control the level of air in the cell" (group IV) and "moving a first cylindrical member having at least one hole that is exposed to air relative to a second member" (group V).

No fee is believed due. If a fee is due please apply that fee and any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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